

HUMAN RIGHTS COMMISSION

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CHARGE NO.: 2002 CF1418
EEOC NO.:
ALS NO.: 12052

RECOMMENDED ORDER AND DECISION

This matter comes before me pursuant to the order of default entered against Respondent on March 26, 2003. A public hearing on damages only was held before Administrative Law Judge Nelson E. Perez on June 23, 2003 at which Respondent did not appear. Subsequently, Judge Perez left the Commission prior to submitting a Recommended Order and Decision (ROD) in this matter. In accord with Section 5/8A-102(I)(4) of the Human Rights Act, Acting Chief Administrative Law Judge Michael J. Evans advised the parties of the departure of Judge Perez and inquired if they had any objection to another judge writing the ROD based on the transcript and exhibits from the public hearing. Respondent did not respond to this order, while Complainant filed her motion on October 17, 2003 requesting that I write the ROD. The motion was granted on October 21, 2003 subject to the filing of any objection by Respondent by no later than November 5, 2003. No such objection was filed and this matter is now ready for disposition.

Statement of the Case

Complainant was discharged from her employment as operations manager for Respondent on July 19, 2001. The charge in this case, as submitted to the Department of Human Rights, was perfected on January 3, 2002. In it, Complainant alleged that Respondent sexually harassed her and discharged her because of her opposition to the sexual harassment. Complainant's supervisor (and the president/owner of Respondent) allegedly "made sexually offensive comments, left

pornographic material on (her) computer, asked (her) out on numerous occasions and asked to move in with (her)” and he struck her on the buttocks on at least one occasion. Respondent did not file a verified response to the charge and was subsequently found to be in default for failing to cooperate in the Department’s investigation of Complainant’s charge. The final order of default was entered by the Chief Legal Counsel of the Department on November 12, 2002.

On November 14, 2002, the Department submitted its petition to the Commission to set a hearing to determine Complainant’s damages in light of the default by Respondent. As noted above, the Commission’s order directing the Administrative Law Section to conduct such a hearing was entered on March 26, 2003 and the public hearing was held on June 23, 2003 without the participation of Respondent.

Findings of Fact

1. Complainant Jill Sitasz filed her perfected Charge No. 2002 CF1418 with the Illinois Department of Human Rights on January 3, 2002, alleging that Respondent sexually harassed her and, on July 19, 2001, discharged her from her employment due to opposition to the sexual harassment.

2. Respondent did not file a verified response to the charge and was subsequently found in default by the Chief Legal Counsel of the Department in an order entered on November 12, 2002.

3. On March 26, 2003, the Commission entered an order directing the Administrative Law Section to conduct a public hearing on damages. The hearing was subsequently held on June 23, 2003 before Administrative Law Judge Nelson E. Perez.

4. After Judge Perez left the Commission, Complainant consented to the writing of the ROD for this case by me in her motion filed on October 17, 2003.

5. Respondent did not participate in the public hearing of June 23, 2003 and did not respond to the order of Judge Evans regarding reassignment of this matter to another judge for completion of the ROD.

6. Complainant was unemployed from the date of her discharge through the date of hearing, although she attempted to establish her own trucking firm from which she realized no income. She received \$9,000.00 as unemployment compensation benefits during this period. The calculation of her back pay award is found below and is incorporated in these findings of fact.

7. Complainant makes no claim for emotional distress or attorney's fees and costs.

Conclusions of Law

1. Complainant is an "aggrieved party" and Respondent is an "employer" as those terms are defined by the Illinois Human Rights Act, 775 ILCS 5/103(B) and 5/2-101(B).

2. The Commission has jurisdiction over the parties and the subject matter of this action.

3. In accord with the default order entered on November 12, 2002, Respondent is liable for a violation of the provisions of the Illinois Human Rights Act that prohibit sexual harassment and retaliatory discharge for opposing such sexual harassment.

4. Based on the default of Respondent and its failure to effectively dispute or oppose any of the requests made by Complainant with regard to an award for back pay, Complainant is entitled to an award for back pay as specified below in order to be made whole.

5. This ROD is being completed and submitted by me because Judge Perez, who presided at the public hearing on damages, is no longer employed by the Commission. Further, Complainant consented to my doing so in her motion filed on October 17, 2003. Respondent chose not to make any submission regarding this issue and has thereby waived its right to object.

Discussion

A. Damages

Back Pay -- The first element of damages to be considered is Complainant's request for back pay. Because she was unemployed through to the date of the public hearing (except for an attempt to establish her own trucking business), she is entitled to receive back pay

from the date of her discharge in July, 2001 through June, 2003, a total of 24 months. While calculation of back pay is always somewhat speculative, the task is made even more difficult when a respondent has deliberately failed to provide information through the investigative and discovery process that would make the task more direct. It is the Commission's general principle that any ambiguity in this process be resolved in favor of a prevailing complainant due to the finding of liability against the respondent. Clark v. Human Rights Comm'n, 141 Ill.App.3d 178, 183, 490 N.E.2d 29, 95 Ill.Dec. 556 (1st Dist. 1986). This principle must be rigorously followed when a respondent has failed to participate in the case in any way as has occurred here.

At the time of her termination from employment with Respondent, Complainant's salary was \$52,000.00 per year or \$4,333.33 per month. Tr. 6. From July, 2001 through June, 2003, Complainant was unemployed for 24 months. Therefore, she is entitled to back pay for 24 months at the rate of \$4,333.33 per month, or a gross total of \$103,999.92. However, Complainant testified that she received \$9,000.00 as unemployment compensation benefits (UCB). Tr. 8. This amount must be deducted from her gross back pay, leaving a net amount of \$94,999.92. The total back pay award recommended for Complainant is \$94,999.92.

However, if Complainant is ever required to repay any or all of the UCB she received, the award will provide that Respondent must reimburse her in that amount in order for her to receive the full amount she lost as a result of the unlawful discharge.

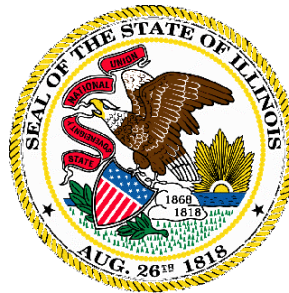
Emotional Distress and Attorney's Fee and Costs -- The Complainant did not request any award for emotional distress, attorney's fees and costs or any other element of damages. Therefore, no award will be recommended for these categories of damages.

Recommendation

It is recommended that the default entered against Respondent be affirmed, that Respondent accordingly be found liable for a violation of the Human Rights Act as alleged in the charge, and that Complainant be awarded the following relief:

- A. That Respondent pay Complainant back pay in the net amount of \$94,999.92 for the period July, 2001 through June, 2003;
- B. That if Complainant is ever required to repay any part or all of the unemployment compensation benefits she received, which were deducted from the gross amount of her back pay in arriving at the award noted in Paragraph A above, Respondent will be required to reimburse her for any such payment so that she will be made whole for the full amount of back pay;
- C. That Respondent pay Complainant interest on all elements of this award contemplated by Section 8A-104(J) of the Human Rights Act (735 ILCS 5/8A-104(J)) and calculated as provided in Section 5300.1145 of the Commission's Procedural Rules, to accrue until payment in full is made by Respondent;
- D. That any public contract currently held by Respondent be terminated forthwith and that Respondent be barred from participating in any public contract for three years in accord with Section 8-109(A)(1) and (2) of the Human Rights Act. 775 ILCS 5/8-109(A)(1) and (2);
- E. That Respondent cease and desist from any discriminatory actions with regard to any of its employees and that Respondent, its managers, supervisors and employees be referred to the Department of Human Rights Training Institute (or any similar program specified by the Department) to receive such training as is necessary to prevent future civil rights violations, with all expenses for such training to be borne by Respondent; and,
- F. That Complainant's personnel file or any other file kept by Respondent concerning Complainant be purged of any reference to this discrimination charge and this litigation.

HUMAN RIGHTS COMMISSION



ENTERED:

November 13, 2003

BY: _____

DAVID J. BRENT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

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